

KAMER ZUCKER ABBOTT
 Edwin A. Keller, Jr. #6013
 R. Todd Creer #10016
 3000 West Charleston Boulevard, Suite 3
 Las Vegas, Nevada 89102-1990
 Tel: (702) 259-8640
 Fax: (702) 259-8646

 Attorneys for Defendant
 Wynn Las Vegas, LLC

UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

GREGORY J. ROBERTSON,)	Case No. 2:10-cv-00303-RCJ-LRL
)	
Plaintiff,)	
)	
vs.)	<u>INDEX OF EXHIBITS TO</u>
)	<u>DEFENDANT'S PARTIAL MOTION</u>
)	<u>TO DISMISS</u>
WYNN LAS VEGAS, LLC, a limited liability)	
company,)	
)	
Defendant.)	
)	

<u>Description</u>	<u>Exhibit</u>
June 26, 2009 Order.....	1

EXHIBIT 1

EXHIBIT 1

ORD

KAMER ZUCKER ABBOTT

Edwin A. Keller, Jr. #6013

Bryan J. Cohen #8033

3000 West Charleston Boulevard, Suite 3

Las Vegas, Nevada 89102-1990

Tel: (702) 259-8640

Fax: (702) 259-8646

Attorneys for Defendant

Wynn Las Vegas, LLC

FILED

JUN 26 9 49 AM '09

[Signature]
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ARIEL LEON, an individual,

Plaintiff,

vs.

WYNN LAS VEGAS, LLC, a Nevada limited liability company; DOES 1 through 10, inclusive; ROE CORPORATIONS 1 through 10, inclusive;

Defendants.

CASE NO. A578566

DEPT NO. XXIV

**ORDER REGARDING
DEFENDANT'S PARTIAL MOTION
TO DISMISS**

Hearing Date: April 15, 2009

Hearing Time: 9:00 a.m.

On April 15, 2009, this Court held a hearing on Defendant's Partial Motion to Dismiss.

The Court having considered the pleadings and arguments by counsel, and good cause appearing.

IT IS ORDERED that Plaintiff's claim for negligent hiring, negligent training and supervision and negligent retention is HEREBY DISMISSED WITHOUT PREJUDICE. The Court finds that a common law claim for negligent hiring, training, and supervision may be predicated only on common law causes of action or duties otherwise imposed by the common law. Allegations that an Employer negligently failed to prevent or remedy race/national origin discrimination and/or related retaliation pertain to an alleged breach of a statutory duty under Nevada's anti-discrimination laws not a duty under the common law. See Griffin v. Acacia Life Ins. Co., 925 A.2d 564, 575-78 (D.C. 2007). As pled, Plaintiff's negligent hiring, negligent training and supervision and negligent retention claim is predicated only upon statutory duties under Nevada's anti-discrimination laws and not duties owed under common law; thus dismissal

1 of this claim is warranted under NRCP 12(b)(5). This is not to say that a claim for negligent
2 hiring, training, and supervision cannot be based on misconduct independently actionable under
3 a common law tort theory or pertain to a duty imposed by common law, which may also be
4 grounds for a statutory claim under Nevada's anti-discrimination laws, such as assault, battery or
5 an employer's negligence in not preventing assault and battery given information it knew or
6 reasonably should have known. See id. Thus, should facts exist to support an allegation of
7 misconduct independently actionable under a common law tort theory or pertain to a duty
8 imposed by common law, Plaintiff may file an amended Complaint to allege negligent hiring,
9 training, and supervision premised on the same within thirty (30) days of this Order.

10 IT IS FURTHER ORDERED that Plaintiff's cause of action for punitive damages is also
11 HEREBY DISMISSED WITH PREJUDICE. Punitive damages are a remedy and not an
12 independent cause of action. Plaintiff will not be precluded from seeking punitive damages
13 under any cause of action providing for such a remedy.

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

The Court HEREBY CONTINUES Defendant's Motion with respect to Plaintiff's request for declaratory and/or injunctive relief. Although the Court is persuaded that declaratory relief in this case is not available as a matter of law given the Nevada Supreme Court's decision in Baldonado v. Wynn Las Vegas, LLC, 194 P.3d 96 (Nev. 2008), in which the Court recognized that such relief is not appropriate when other statutory remedies are available, the Court will allow Plaintiff some latitude in establishing an acceptable basis for declaratory relief. Accordingly, IT IS HEREBY ORDERED that Defendant's Motion with respect to Plaintiff's claim for declaratory and/or injunctive relief be continued for six (6) months, at which time the Court will entertain any new arguments by Plaintiff and any response to the same by Defendant and decide whether Plaintiff's request for declaratory relief should be dismissed.

IT IS SO ORDERED.

JAMES M. BIXLER

DATE

DISTRICT COURT JUDGE

Submitted by:

KAMER ZUCKER ABBOTT

By:

Edwin A. Keller, Jr. #6013

Bryan J. Cohen #8033

3000 West Charleston Boulevard, Suite 3

Las Vegas, Nevada 89102-1990

Tel: (702) 259-8640

Fax: (702) 259-8646

Attorneys for Defendant

Approved as to form and content by:

ESTEBAN-TRINIDAD LAW, P.C.

By:

M. Lani/Esteban-Trinidad #6967

4315 North Rancho Drive, Suite 110

Las Vegas, Nevada 89130

Tel: (702) 736-5297

Fax: (702) 736-5299

Attorney for Plaintiff